

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 02-19
March 22, 2002

RE: May employee of Cabinet for Economic Development own a company that has received or will receive economic incentives from the Cabinet?

DECISION: No, if the employee owns more than 5% of the company.

This opinion is in response to your February 21, 2002, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the March 22, 2002, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are an employee of the Cabinet for Economic Development (the "Cabinet"). You ask the following: If you own or are a part owner of a company, may the company receive incentives offered by the cabinet? Additionally, you ask whether you may purchase part or all of a company that has received benefits or incentives from the Cabinet, whether or not you had any involvement with the incentives as part of your official duties.

KRS 11A.040(4) provides, in part:

(4) A public servant shall not knowingly himself or through any business in which he owns or controls an interest of more than five percent (5%), or by any other person for his use or benefit or on his account, undertake, execute, hold, bid on, negotiate, or enjoy, in whole or in part, any contract, agreement, lease, sale, or purchase made, entered into, awarded, or granted by the agency by which he is employed or which he supervises, subject to the provisions of KRS 45A.340.

Additionally, KRS 11A.020(1)(a), (c) and (d) provide:

(1) No public servant, by himself or through others, shall knowingly:

(a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;

...

(c) Use his official position or office to obtain financial gain for himself or any members of the public servant's family;

(d) Use or attempt to use his official position to secure or create privileges, exemptions, advantages, or treatment for himself or others in derogation of the public interest at large.

The Commission believes that a company receiving economic benefits or incentives from the Cabinet has an “agreement” with the Cabinet. Thus, KRS 11A.040(4) would prohibit you, as an employee of the Cabinet, from owning more than five percent (5%) of a company that is receiving benefits from the Cabinet. You are not prohibited from owning more than five percent (5%) of a company that has received economic benefits or incentives in the past, provided neither you, nor anyone under your supervision, was involved in any facet of the awarding of such benefits.

Similarly, a company of which you own more than a five percent (5%) interest should not seek incentives from the Cabinet. (See Advisory Opinion 96-48, a copy of which is enclosed.) Furthermore, If you own less than a five percent (5%) interest in a company, and the company is seeking incentives from the Cabinet, neither you nor anyone under your supervision should have any involvement in the awarding of such incentives. The Commission advises that if it is a part of your official duty to appear before the Kentucky Economic Development Finance Authority, and you were to appear before the same board for private concerns, it could appear that you are using your official position to give the company an advantage in violation of KRS 11A.020(1)(d) above. The Commission cautions you against such action. KRS 11A.020(2) below, states that you should avoid any conduct which can be construed as using your official position to further your private interest.

(2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

KRS 11A.233 requires beneficiaries of economic incentive awards to file an Economic Incentive Disclosure Statement which requires disclosure of any financial transactions between a beneficiary of financial incentives and any public servant employed by the Cabinet.

Enclosure: Advisory Opinion 96-48